

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act improving spousal elective share.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

- 11 (2) "Fractional interest in property held in joint tenancy with the right of
12 survivorship," whether the fractional interest is unilaterally severable or not,
13 means the fraction, the numerator of which is one and the denominator of
14 which, if the decedent was a joint tenant, is one plus the number of joint
15 tenants who survive the decedent and which, if the decedent was not a joint
16 tenant, is the number of joint tenants.
- 17 (3) "Marriage," as it relates to a transfer by the decedent during marriage, means
18 any marriage of the decedent to the decedent's surviving spouse.
- 19 (4) "Nonadverse party" means a person who does not have a substantial beneficial
20 interest in the trust or other property arrangement that would be adversely
21 affected by the exercise or nonexercise of the power that he [or she] possesses
22 respecting the trust or other property arrangement. A person having a general
23 power of appointment over property is deemed to have a beneficial interest in
24 the property.
- 25 (5) "Power" or "power of appointment" includes a power to designate the
26 beneficiary of a beneficiary designation.
- 27 (6) "Presently exercisable general power of appointment" means a power of
28 appointment under which, at the time in question, the decedent, whether or
29 not he [or she] then had the capacity to exercise the power, held a power to
30 create a present or future interest in himself [or herself], his [or her] creditors,
31 his [or her] estate, or creditors of his [or her] estate, and includes a power to
32 revoke or invade the principal of a trust or other property arrangement.
- 33 (7) "Probate estate" means property that would pass by intestate succession if the
34 decedent dies without a valid will.

- 35 (8) "Property" includes values subject to a beneficiary designation.
- 36 (9) "Right to income" includes a right to payments under a commercial or private
37 annuity, an annuity trust, a unitrust, or a similar arrangement.
- 38 (10) "Transfer," as it relates to a transfer by or of the decedent, includes (A) an
39 exercise or release of a presently exercisable general power of appointment
40 held by the decedent, and (B) an exercise, release, or lapse of a general power
41 of appointment that the decedent, created in himself [or herself].
- 42 (11) "Transfers by a testamentary substitute" means those nonprobate transfers of
43 the type specifically included in the elective estate by the provisions of section
44 five.
- 45 (12) "Surviving husband or wife." A person who was married to the decedent at the
46 time of his or her death.

47 Section 2. [**Elective Share - Relinquishment of Election.**]

48 (a) The surviving husband or wife of a person who dies domiciled in Massachusetts
49 may elect, under the limitations and conditions stated in this chapter, to claim the value of such
50 portion of the elective estate of the deceased spouse as he or she is given under this chapter in
51 lieu of any provisions that may have been made in a will for him or for her and any provisions
52 under the intestacy laws for him or for her and any provisions that may have been made for him
53 or for her in any testamentary substitute included in the elective estate. The election provided
54 by this chapter is subject to the provisions of section thirty-six of chapter two hundred and nine.
55 The right, if any, of the surviving husband or wife of a person who dies domiciled outside this
56 commonwealth to take an elective share in property in this commonwealth is governed by the
57 law of the decedent's domicile at death.

58 (b) Spouses are entitled to opt out of the provisions of this chapter by relinquishing
59 the election provided by this chapter. A spouse, by a writing subscribed by said spouse, may
60 relinquish the election granted by this chapter as to the entire elective estate or a portion
61 thereof or as to any particular property. A relinquishment is effective, in accordance with its
62 terms, whether executed before or after the marriage of the spouses; whether executed before,
63 on or after the effective date of this chapter; whether unilateral in form, executed only by the
64 maker thereof, or bilateral in form, executed by both spouses; whether absolute or conditional;
65 whether executed with or without consideration; and whether executed during the lifetime of
66 the other spouse or after his or her death.

67 (c) Language that relinquish, renounce, waive, release, abandon, or disclaim all
68 rights in the estate of the other spouse, or substantially equivalent language, is a relinquishment
69 of election against any property included in the elective estate under this chapter. Language
70 that relinquish, renounce, waive, release, abandon, or disclaim rights under a particular will or
71 testamentary substitute or an interest in particular property, or substantially equivalent
72 language, is a relinquishment only of the particular rights or property identified therein with
73 reasonable particularity.

74 (d) A relinquishment executed after the effective date of this chapter is sufficient if
75 in writing and subscribed by the maker thereof, acknowledged before a notary public in form
76 and content substantially as follows:

77

78 **This form gives up important legal rights. If not understood,**
79 **consult a lawyer.**

80 Relinquishment of Rights to Claim Share of Elective Estate Under G.L. c. 191 C.

81 1.) As a married person I will have certain rights under Massachusetts Laws
82 Chapter 191 C to elect to take a share of my spouse's property after his or
83 her death. I may claim this share even if my spouse does not want me to
84 have it. I have been given an explanation of these rights or an opportunity
85 to review my rights under Massachusetts law as fully as I desire. I have
86 the right to consult a lawyer regarding my rights under Massachusetts law.

87 2.) I have a right to know what property my spouse owns or has an interest in
88 before signing this form. Knowing of this right, I have [initial one]:

89 [] reviewed a list of such property which is attached to this form as
90 Exhibit A; or

91 [] intentionally decided to sign this form without full disclosure of
92 the property owned by my spouse, knowing I will be bound by my
93 signature even for property I know nothing about.

94 3.) I have read the foregoing description of my rights, and have been given a
95 full opportunity to seek whatever advice and counsel I desire, and I am
96 signing this form voluntarily as my free act and deed.

97 **I hereby relinquish, renounce, waive, release, abandon, disclaim, and give up**
98 **the following rights:**

99 [initial only those categories you intend to apply]

100 [] All rights in the estate of my spouse that I may otherwise
101 have under Mass. Gen. Laws Chapter 191 C.

102 [] Any rights I may have as to:

103 _____.

104 [here state the particular property, will, or testamentary substitute as to which
105 rights are being given up]

106 [] I release my rights in return for the following promises or
107 subject to the following conditions.

108 .
109 [here insert any conditions or limitations you wish to impose]

110 Signed under seal as a legally binding document.

111

112 DATE: _____

113 Signature

114 **COMMONWEALTH OF MASSACHUSETTS**

115 _____, ss. (Date)

116 Then personally appeared the above-named

117 _____ and acknowledged the foregoing instrument to be

118 his/her free act and deed, before me.

119 _____

120 Notary Public

121 My Commission Exp:

122 _____

123

124 (d) Unless it provides to the contrary, an instrument of transfer to a third party
125 executed by both spouses, or executed by one spouse and consented to in writing by the other

126 spouse, is a relinquishment of the election under this chapter by each spouse against the other
127 in the property transferred.

128 (e) Unless it provides to the contrary, a valid written agreement that relinquishes,
129 renounces, waives, releases, abandons, or disclaims all rights in the property or estate of a
130 present or prospective spouse, or substantially equivalent language, or a complete property
131 settlement entered into after or in anticipation of separation or divorce is a relinquishment of
132 the elective share under this chapter by each spouse in the property of the other.

133 (f) If the validity of a relinquishment, renunciation, waiver, release, disclaimer, or
134 consent to transfer with respect to any property includible in the elective estate is or was
135 governed by federal law or by the law of another jurisdiction, then a valid relinquishment,
136 renunciation, waiver, release, disclaimer, or consent to transfer under such law shall be deemed
137 an effective relinquishment of the election provided by this chapter.

138 Section 3. **[Election Personal To Surviving Husband Or Wife.]**

139 (a) [Surviving husband or wife must be living at time of election.] The election
140 provided by this chapter is personal to the surviving husband or wife, may not be reached by
141 creditors or sold, assigned, or transferred in any manner, other than a relinquishment as
142 provided in section two of this chapter, and may only be made during the lifetime of the
143 surviving husband or wife. In the case of a surviving husband or wife under conservatorship or
144 guardianship, the election may be made by the duly appointed conservator or guardian of the
145 surviving husband or wife only with the approval of the probate court upon a substituted
146 judgment standard. No surviving husband or wife or the conservator, guardian, or agent under a
147 durable power of attorney of said surviving husband or wife shall be compelled to make an
148 election under this chapter nor penalized, disadvantaged, or discriminated against by virtue of

149 the relinquishment of or failure to make an election under this chapter. Relinquishment of
150 election or failure to make an election shall not affect the eligibility of the surviving husband or
151 wife for benefits or assistance under any governmental program.

152 (b) [Incapacitated Surviving Spouse.] If the election is exercised on behalf of a surviving
153 spouse who is an incapacitated person, that portion of the elective share amounts due under
154 section seven (b) must be placed in a custodial trust for the benefit of the surviving husband or
155 wife under the provisions of chapter two hundred and three B, except as modified below. For
156 the purposes of this subsection, an election on behalf of a surviving spouse by an authorized
157 agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who
158 is an incapacitated person. For purposes of the custodial trust established by this subsection, (i)
159 the electing guardian, conservator, or agent is the custodial trustee, (ii) the surviving spouse is
160 the beneficiary, and (iii) the custodial trust is deemed to have been created by the decedent
161 spouse by written transfer that takes effect at the decedent spouse's death and that directs the
162 custodial trustee to administer the custodial trust as for an incapacitated beneficiary.

163 (c) [Custodial Trust.] For the purposes of subsection (b) of this section, the chapter
164 two hundred and three B shall be applied as if section six (b) thereof were repealed and sections
165 two (e), nine (b), and seventeen (a) were amended to read as follows:

166 (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an
167 incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary
168 regains capacity, the beneficiary then acquires the power to terminate the custodial trust by
169 delivering to the custodial trustee a writing signed by the beneficiary declaring the termination.
170 If not previously terminated, the custodial trust terminates on the death of the beneficiary.

171 (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or
172 all of the custodial trust property as the custodial trustee considers advisable for the use and
173 benefit of the beneficiary and individuals who were supported by the beneficiary when the
174 beneficiary became incapacitated, or who are legally entitled to support by the beneficiary.
175 Expenditures may be made in the manner, when and to the extent that the custodial trustee
176 determines suitable and proper, without court order but with regard to other support, income,
177 and property of the beneficiary and benefits of medical or other forms of assistance from any
178 state or federal government or governmental agency for which the beneficiary must qualify on
179 the basis of need.

180 (3) Upon the beneficiary's death, the custodial trustee shall transfer the
181 unexpended custodial trust property in the following order: (i) to or as directed by the person
182 who would have taken under the disposition originally made by the beneficiary's predeceased
183 spouse against whom the elective share was taken; or (ii) under the residuary clause, if any, of
184 the will of the beneficiary's predeceased spouse against whom the elective share was taken, as
185 if that predeceased spouse died immediately after the beneficiary; or (iii) to that predeceased
186 spouse's heirs.

187 Section 4. **[Amount of Elective Share.]**

188 (a) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the
189 deceased left issue, the surviving husband or wife shall take absolutely an amount equal to the
190 value of one-third of so much of the elective estate as does not exceed one million dollars, and
191 shall receive in addition to that amount only the income during his or her life on an amount
192 equal to the value of one-third of the excess of the elective estate above one million dollars.

193 (b) Except as otherwise provided in paragraphs (c), (d) and (e) of this section, if the
194 deceased left no issue, the surviving husband or wife shall take absolutely an amount equal to
195 the greater of fifty thousand dollars or one-half of the value of so much of the elective estate as
196 does not exceed one million dollars, and shall receive in addition to that amount only the
197 income during his or her life on an amount equal to one-third of the excess of the elective estate
198 above one million dollars.

199 (c) Except for an election under paragraph (e) of this section, if the deceased person and
200 the surviving husband or wife were married for less than fifteen years, then the surviving
201 husband or wife shall take the following percentage of the elective share amount otherwise
202 provided under (a) or (b) of this section.

203 (1) If the decedent and the spouse were married to each other for one year
204 or less, then sixteen percent of the elective share amount;

205 (2) for each additional year of marriage after the first, an additional six
206 percent of the elective share amount.

207 (3) For purposes of this section, the length of time the decedent and the
208 surviving spouse were married to each other shall be the sum of the lengths of all of
209 their marriages to each other.

210 (d) Except for an election under paragraph (e) of this section, an election under this
211 chapter shall be further limited to no more than the amount necessary to bring the value of the
212 property of the surviving husband or wife, after said election, to one-half the value of the
213 combined property of the elective estate of the deceased spouse and the elective estate of the

214 surviving husband or wife valued as if he or she had died contemporaneously with the deceased
215 spouse.

216 (e) If at the time of death of the deceased spouse, divorce proceedings were
217 pending and the parties had executed a written property settlement or the court had entered
218 judgment dividing their property which had not yet become final, the surviving husband or wife
219 may elect to take thereunder, which shall become the elective share for purposes of this
220 chapter.

221 (f) Except for an election under paragraph (e) of this section, the surviving
222 husband's or wife's homestead allowance, exempt property, and family allowance, if any, are
223 not charged against but are in addition to the elective share.

224 Section 5. **[Property included in and excluded from the Elective Estate.]**

225 For purposes of this chapter, the elective estate includes:

226 (a) The decedent's probate estate, reduced by funeral and administration
227 expenses, homestead allowance, family allowances, exempt property, and enforceable claims;
228 and

229 (b) The decedent's transfers by testamentary substitute, consisting of the decedent's
230 nonprobate transfers to others of any of the following types, in the amount provided
231 respectively for each type of transfer.

232 (1) Property owned or owned in substance by the decedent immediately
233 before death that passed outside probate at the decedent's death. Property included
234 under this category includes:

235 (i) Property over which the decedent alone, immediately before death,
236 held a presently exercisable general power of appointment. The amount included is the
237 value of the property subject to the power, to the extent the property passed at the
238 decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the
239 benefit of any person other than the decedent's estate or surviving husband or wife.

240 (ii) The decedent's fractional interest in property held by the decedent in
241 joint tenancy with the right of survivorship. The amount included is the value of the
242 decedent's fractional interest, to the extent the fractional interest passed by right of
243 survivorship at the decedent's death to a surviving joint tenant other than the
244 decedent's surviving husband or wife.

245 (iii) The decedent's ownership interest in property or accounts held in POD,
246 TOD, or co-ownership registration with the right of survivorship. The amount included is
247 the value of the decedent's ownership interest, to the extent the decedent's ownership
248 interest passed at the decedent's death to or for the benefit of any person other than
249 the decedent's estate or surviving husband or wife.

250 (2) Property transferred in any of the following forms by the decedent
251 during marriage:

252 (i) Any irrevocable transfer in which the decedent retained the right to the
253 possession or enjoyment of, or to the income from, the property if and to the extent the
254 decedent's right terminated at or continued beyond the decedent's death. The amount
255 included is the value of the fraction of the property to which the decedent's right
256 related, to the extent the fraction of the property passed outside probate to or for the
257 benefit of any person other than the decedent's estate or surviving husband or wife.

258 (ii) Any transfer in which the decedent created a power over income or
259 property, exercisable by the decedent alone or in conjunction with any other person, or
260 exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the
261 decedent, the decedent's estate, or creditors of the decedent's estate. The amount
262 included with respect to a power over property is the value of the property subject to
263 the power, and the amount included with respect to a power over income is the value of
264 the property that produces or produced the income, to the extent the power in either
265 case was exercisable at the decedent's death to or for the benefit of any person other
266 than the decedent's surviving spouse or to the extent the property passed at the
267 decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the
268 benefit of any person other than the decedent's estate or surviving spouse. If the
269 power is a power over both income and property and the preceding sentence produces
270 different amounts, the amount included is the greater amount.

271 (3) Property that passed during marriage and during the one year period
272 next preceding the decedent's death as a result of a transfer by the decedent if the
273 transfer occurred after the filing of divorce or separation proceedings and in violation of
274 a restraining order, injunction, or other order of the probate court restricting the
275 transfer; and

276
277 (c) [Testamentary substitutes passing to surviving husband or wife] Excluding property
278 passing to the surviving husband or wife under the federal social security system, the value of
279 the elective estate includes the value of the decedent's transfers by testamentary substitute,

280 consisting of nonprobate transfers to the decedent's surviving husband or wife, of the following
281 types in the amount provided respectively for each type of transfer:

282 (1) the decedent's fractional interest in property held as a joint tenant with the
283 right of survivorship, to the extent that the decedent's fractional interest passed to the
284 surviving husband or wife as surviving joint tenant;

285 (2) the decedent's ownership interest in property or accounts held in co-ownership
286 registration with the right of survivorship, to the extent the decedent's ownership
287 interest passed to the surviving husband or wife as surviving co-owner; and

288 (3) all other property that would have been included in the elective estate under
289 paragraphs (b)(1) or (b)(2) or (b)(3) of this section had it passed to or for the benefit of a
290 person other than the decedent's spouse, the decedent, or the decedent's creditors,
291 estate, or estate creditors.

292 (d) The value of property included in the elective estate is reduced in each category by
293 enforceable claims against the included property

294 (e) In case of overlapping application to the same property of the paragraphs or
295 subparagraphs of this section including property in the elective estate, the property is included
296 in the elective estate under the provision yielding the greatest value, and under only one
297 overlapping provision if they all yield the same value.

298 (f) [Property excluded from Elective Estate.]

299 Notwithstanding any other provision of this chapter, the following are excluded from
300 the elective estate:

301 (1) The value of any property is excluded from the decedent's transfers by
302 testamentary substitute to the extent the decedent received adequate and full
303 consideration in money or money's worth for a transfer of the property.

304 (2) The value of any property relinquished under section two of this
305 chapter is excluded from the elective estate.

306 (3) the value of proceeds of life insurance not payable to the decedent's
307 estate is excluded from the elective estate.

308 (4) The value of interests in community property arising under the
309 community property laws of other states is excluded from the elective estate.

310 (5) The value of a principal residence transferred to or for the benefit of a
311 decedent spouse's issue is excluded from the elective estate.

312 (6) The value of any property held in trust for the benefit of a disabled child
313 or grandchild of the decedent spouse is excluded from the elective estate.

314 (7) The value of any property transferred by testamentary substitute as
315 defined in section five (b)(one) and (two) prior to the effective date of this chapter is
316 excluded from the elective estate.

317 Section 6. **[Proceedings for Elective Share; Time Limit].**

318 (a) An election under this chapter shall be made by filing in the probate court a
319 petition for the elective share within the earlier of nine months after the date of the decedent's
320 death or six months after the surviving husband or wife receives notice of proceedings for
321 probate of the decedent's will or administration of the decedent's estate. The surviving husband

322 or wife may dismiss or withdraw his or her petition for an elective share, with prejudice, at any
323 time before entry of a final determination by the court and the expiration of the time for appeal
324 or, if an appeal is taken, at any time during the appeal or within ten days after rescript.

325 (b) If, after a will of the deceased is offered for probate, legal proceedings have
326 been instituted wherein its validity or effect is drawn in question, the probate court may within
327 six months, on petition and after such notice as it orders, extend the time for filing an election
328 under this chapter for a reasonable time not to exceed six months from the termination of such
329 proceedings.

330 (c) After the decedent's death and either before or after the filing of a petition for
331 election under this chapter, a surviving husband or wife has the right to receive all material
332 information regarding property that is or may be includible in the elective estate, within a
333 reasonable time after his or her request for such information, from the personal representative
334 of the decedent and from any person in possession or control of such property and from any
335 person with an interest in such property, and if necessary, the surviving husband or wife may
336 apply to the probate court for appropriate assistance in enforcing such right to information.

337 (d) Notice of the filing of the petition shall be given to persons interested in the
338 estate and to persons whose interests may be adversely affected by the taking of the elective
339 share. The proceeding for determination of the elective share may be maintained against fewer
340 than all persons against whom relief could be sought, but no person is subject to contribution in
341 any greater amount than would have been the case if relief had been secured against all such
342 persons.

343 (e) Upon application by the surviving husband or wife, the probate court may allow
344 attachments, trustee process, specific orders for equitable relief, and such other writs and

345 orders as it deems meet and just to preserve property that is or may be includible in the elective
346 estate.

347 (f) Upon application to the probate court after the death of the decedent by the
348 personal representative or a surviving husband or wife or other person interested in the elective
349 estate, the court may order that all or part of the property that is or may be includible in the
350 elective estate be paid pendent lite to persons entitled thereto in amounts and subject to
351 conditions consistent with this chapter.

352 (g) After notice and hearing, the court shall determine the amount of the elective
353 share and shall order its payment as provided in section seven of this chapter. If it appears that
354 a fund or property included in the elective estate has not come into possession of the personal
355 representative, or has been distributed by the personal representative, the court shall
356 nevertheless fix the liability of any person who has any interest in the fund or property or who
357 has possession thereof, whether as trustee or otherwise.

358 (h) The orders or judgments of the probate court shall be enforceable in the same
359 manner as other orders or judgments for the payment of money or for specific relief as to
360 particular assets. Interest shall accrue from the date of judgment at twelve percent per annum.

361 (i) In addition to the powers conferred in section ten of chapter two hundred and
362 eleven B, the chief justice for the probate and family court department may, from time to time,
363 provide procedural forms and make general rules and issue standing orders in reference to
364 practice and procedure as relates to the elective share of the surviving husband or wife, subject
365 to the approval of the supreme judicial court.

366 Section 7. [Liability for Satisfaction of Elective Share.]

367 (a) In a petition for the elective share under this chapter, there shall first be applied
368 to satisfy the elective share amount and to reduce or eliminate any contributions due from
369 others, property that passes or has passed or but for the election would have passed to the
370 surviving husband or wife as a result of decedent's death.

371 (b) Except as otherwise provided in the will or an instrument governing a
372 testamentary substitute, contribution to the remaining elective share amount to which the
373 surviving spouse is entitled shall be made pro-rata in proportion to the value of their interests in
374 the elective estate by the original recipients, beneficiaries, and distributees under the
375 decedent's will, by intestacy, and by testamentary substitute, which contribution may be made
376 in cash or in the specific property received from the decedent by the person required to make
377 such contribution or partly in cash and partly in such property as such person in his or her
378 discretion shall determine.

379 (c) No original recipient who shall conform to the standard of a Massachusetts
380 executor or administrator with respect to the care and management of assets included in the
381 elective estate or who shall hold all such assets in the form in which such original recipient
382 received them, shall be liable to the surviving spouse in an amount greater than the value of the
383 elective estate assets received by such original recipient, determined as of the date of
384 distribution or payment to the surviving husband or wife in satisfaction of such liability including
385 interest, if any, under section six (g) of this chapter. No beneficiary shall be liable to the
386 surviving spouse in an amount greater than the value of such beneficiary's share of the elective
387 estate at the date of distribution or payment to the surviving husband or wife in satisfaction of
388 such liability including interest, if any, under section six (g) of this chapter.

389 (d) [Protection of Subsequent Transferees]

390 A person, other than an original recipient, a beneficiary, or a payor, who
391 receives an asset included in the elective estate, whether for value or as a gift, shall not be liable
392 under this chapter for the value of the asset or any portion thereof, regardless of whether at the
393 time such asset was received such person had notice of the surviving spouse's intention to file a
394 petition for the elective share or notice that a petition for the elective share had been filed,
395 unless the transfer to such person was a fraudulent transfer as to the surviving husband or wife.

396 Section 8. **[Protection of Payors and Other Third Parties.]**

397 (a) [Nonexistence of Liens or Encumbrances.]

398 The elective share of a surviving husband or wife under this chapter shall not be
399 construed as imposing a lien or other encumbrance on any real or personal property, tangible or
400 intangible, includible in the elective estate.

401 (b) A payor or other third party is not liable for having made a payment or
402 transferred an item of property or other benefit to a beneficiary designated in a governing
403 instrument, or for having taken any other action in good faith reliance on the validity of a
404 governing instrument, upon request and satisfactory proof of the decedent's death, before the
405 payor or other third party received written notice from the surviving spouse or the surviving
406 spouse's representative that a petition for the elective share has been filed. A payor or other
407 third party is liable for payments made or other actions taken after the payor or other third
408 party received written notice that a petition for the elective share has been filed.

409 (c) A written notice that a petition for the elective share has been filed must be
410 mailed to the payor's or other third party's main office or home by registered or certified mail,
411 return receipt requested, or served upon the payor or other third party in the same manner as a

412 summons in a civil action. Upon receipt of written notice that a petition for the elective share
413 has been filed, a payor or other third party may pay any amount owed to or with the court
414 having jurisdiction of the probate proceedings relating to the decedent's estate, or if no
415 proceedings have been commenced, to or with the probate court having jurisdiction of probate
416 proceedings relating to decedents' estates located in the county of the decedent's last known
417 address. Subject to rule or regulation of the probate court with respect to acceptable and
418 unacceptable property, or on motion with the approval of the probate court, and subject further
419 to such terms and conditions as the probate court may impose, a payor or other third party may
420 transfer or deposit any item of property held by it to or with the court having jurisdiction of the
421 probate proceedings relating to the decedent's death, or if no proceedings have been
422 commenced, to or with the probate court having jurisdiction of probate proceedings relating to
423 decedents' estates in the county of the decedent's last known address. The court shall hold the
424 funds or item of property and, upon its determination of the elective share under this chapter,
425 shall order disbursement in accordance with the determination. If the petition for an elective
426 share is withdrawn or dismissed, the court shall order disbursement to the designated
427 beneficiary. Payments or transfers to the court or deposits made into court discharge the payor
428 or other third party from all claims for amounts so paid or the value of property so transferred
429 or deposited.

430

431 The right of election provided under this chapter shall not create an interest, in any real
432 or personal property of a spouse, nor create any lien or encumbrance on any real or personal
433 property of a spouse, nor impair or impede or restrict in any way the right of a spouse to the
434 ownership and free transferability of his or her property.

435 Section 9. **[Real Estate.]**

436 An election under this chapter shall not divest, encumber or have any operation or effect on any
437 interest in real or personal property held by any third party.

438 Section 10. This act shall be effective for estates of persons dying on or after January one, two
439 thousand thirteen.